IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7729 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAJAPATI ANILKUMAR JAGDISHBHAI VIDYA SAHAYAK

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 7729 of 2001

MR KB PUJARA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED BY DS for Respondents No. 1,2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 06/03/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Shri H.S. Munshaw for the respondents.

2. The petitioner has challenged the validity of notice dated 14.8.2001 whereby he has been called upon to show cause as to why his service should not be terminated.

3. Learned advocate Shri K.B. Pujara appearing for the petitioner has submitted that by virtue of the impugned show-cause notice, the petitioner has been called upon to show cause as to why his service should not be terminated. According to him, there is an allegation against the petitioner that he has been involved in a corruption case. It has been submitted by the learned advocate for the petitioner that simply because the petitioner has been involved in a corruption case, his service cannot be terminated unless departmental inquiry has been initiated and the petitioner is found guilt or the petitioner is convicted in the criminal case filed against him. According to the learned advocate, neither departmental inquiry has been initiated nor the petitioner has been convicted in the criminal case referred to in the impugned show-cause notice. It has been thus submitted by the learned advocate that the impugned notice is bad in law and, therefore, it should be quashed and set aside.

4. In pursuance of notice issued by this court, learned advocate Shri Munshaw has appeared for the respondents and has submitted that the petitioner has been involved in a serious criminal case. The petitioner had accepted an amount of bribe on behalf of somebody else and therefore a criminal case has been filed against him. He has drawn my attention to the contents of the impugned notice and has tried to show that the petitioner is involved in a serious offence. He has also submitted that looking into the said misconduct, the petitioner cannot be continued as a teacher as his function is to impart training to young students.

5. I have heard the learned advocates at length. Normally, this Court would not like to interfere where a show-cause notice has been challenged for the reason that if a show-cause notice has been given, the petitioner can very well give reply and therefore normally the petition would be premature in such a case. However, looking to the peculiar facts of the case, this Court would like to interfere in this case for the reason that the petitioner cannot be called upon to show cause as to why his service should not be terminated at this stage because neither the petitioner has been convicted by a competent court conducting criminal matters, nor the petitioner has been

held guilty in the inquiry initiated against him. Looking to the abovestated undisputed fact, it is not open to the respondents to terminate service of the petitioner and therefore such a show-cause notice could not have been issued to the petitioner.

5. In the circumstances, the impugned show-cause notice dated 14.8.2001 is quashed and set aside. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(hn)